

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: :  
LYONDELL CHEMICAL COMPANY, :Chapter 11  
and MILLENNIUM CUSTODIAL TRUST, :  
Debtors. :Case No. 09-10023-mg  
.....  
EDWARD S. WEISFELNER, :  
as Litigation Trustee, :  
vs. :  
THE LEGAL REPRESENTATIVE OF :Adv. Proc. 09-01375-mg  
THE ESTATE OF RICHARD. :  
.....  
WEISFELNER, ET AL. :  
vs. :Adv. Proc. 10-04609-mg  
CIBC World Markets, et al. :  
.....  
EDWARD S. WEISFELNER, :  
as Litigation Trustee, :Adv. Proc. 10-05525-mg  
vs. :  
ALFRED R. HOFFMANN, CHARLES :  
SCHWAB & CO, INC. CUST IRA, :  
.....  
EDWARD S. WEISFELNER, as :  
Litigation Trustee, :Adv. Proc. 11-01844-mg  
vs. :  
NAG INVESTMENTS, LLC, et al. :  
.....  
WEISFELNER, :  
vs. :Adv. Proc. 12-01570-mg  
REICHMAN, et al. :  
.....

Case Management Conference  
New York, New York  
September 12, 2016  
2:03 - 3:23

Audio Operator: Electronically Recorded  
by R. Liell, ECRO

BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

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09-01375-mg - TRANSCRIPT OF MOTION  
TO DISMISS ADVERSARY PROCEEDING; (Doc No. 748)  
(Motion to Dismiss Count VII of the Second Amended  
Complaint) Filed by Michael Alexander Kleinman  
on behalf of Alan S. Bigman; HEARING RE: (Doc #750)  
Motion to Dismiss Adversary Proceeding Filed by  
John O. Farley on behalf of Diane Currier, Estate  
of Richard E. Floor; (Doc #801) Case Management  
Conference

10-04609-mg (Doc #2422) Case Management  
Conference

10-05525-mg (Doc #928) Case Management  
Conference

11-01844-mg (Doc #40) Scheduling Case  
Management Conference

12-01570-mg (Doc #124) Case Management  
Conference

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ON STATUS CONFERENCE

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1 (On record at 02:02:45 p.m.)

2 JUDGE ROBERT DRAIN: All right. Please  
3 be seated.

4 All right. In connection with Lyondell,  
5 this is a case management conference, status conference  
6 in the following adversary proceedings, Weisfelner vs.  
7 Bovadnik(phonetic), 09-1375; Weisfelner vs. 11, 10-04609;  
8 Weisfelner vs. Reichman, 12-01570; Weisfelner vs. NAG  
9 Investments, LLC, 11-01844 and Weisfelner vs. Hoffman,  
10 10-05525.

11 All right, let me hear from Plaintiff's  
12 counsel first. I have a list of appearances in front  
13 of me, so --

14 SIGMUND WISSNER-GROSS: Good afternoon,  
15 Your Honor. This is Sigmund Wissner-Gross, Counsel to  
16 Ed Weisfelner, Trustee of the LB Litigation Trust and  
17 Trustee of the Glattiter(phonetic) Trust.

18 But, Your Honor, with me today are my  
19 partner May Orenstein, Justin Weddle and Steve Pohl.  
20 Depending upon issues that you will focus on, they may  
21 address some of those points.

22 Your Honor, I think there are three  
23 basic matters that originally were scheduled to be heard  
24 today. The first, pursuant to Your Honor's August 11th,  
25 2016 scheduling order will be -- dealt with the



1 implications of Judge Cote's (phonetic) ruling in the  
2 Hoffman matter she reinstated the intentional  
3 fraudulent transfer claim.

4 And in your August 11th order  
5 scheduling case management conference, Your Honor  
6 published three discreet questions for the parties  
7 to address and both the Trustee and both counsel to the  
8 Defendants, remaining Defendants, in the Bovadnik action,  
9 as well as Mr. Anker on behalf of certain show,  
10 the Defendants have submitted letters addressing a  
11 response to those questions.

12 We all seem to agree that Hoffman is for  
13 another day. I know I had seen Judge Cote's order  
14 scheduling the briefing on the Motion for Reconsideration.  
15 I guess that main thing is completed now.

16 And in there the Plaintiffs were -- the  
17 Defendants' counsel, you seemed to agree that -- again to  
18 Judge Cote's order on the Motion for Reconsideration,  
19 there's really nothing that should be done at this point  
20 and Mr. Anker's letter certainly lays out at some length  
21 all of the motions he intends to make or wants to make  
22 if Judge Cote denies the Motion for  
23 Reconsideration or reaffirms, which is the same  
24 result.

25 I know you said something about asking

1 her to certify it or it's certainly not a final order  
2 that she's entered, that's clear, but I guess  
3 that's -- you agree --

4 JUDGE MARTIN GLENN: No, I think this is  
5 one of those rare cases where I think all counsel  
6 are in agreement that the case of Hoffman, it should be  
7 for another day.

8 The question I guess I have, I didn't  
9 see in a number of the status letters that were filed,  
10 is what -- and this is what I was mulling over when  
11 I set the October 17th trial date  
12 and I'm certainly prepared to stick by the October  
13 17th trial date.

14 The question in my mind was well, is  
15 the intention of filing a condensed claim in Bovadnik  
16 or it might have been Bovadnik, does the Motion for  
17 Reconsideration in Hoffman Industries, on the basis of  
18 Hoffman, Judge Golding's ruling that he dismissed the  
19 actual trial and condensed claim in Bovadnik?  
20 I didn't, I might have missed it, but I didn't see  
21 in your letter or the Defendants' letter what good the  
22 seminal -- what should happen while that Motion for  
23 Reconsideration is pending.

24 SIGMUND WISSNER-GROSS: Well, we suggest  
25 in our papers --

1 JUDGE MARTIN GLENN: Well, I mean this  
2 is ready to go to trial.

3 SIGMUND WISSNER-GROSS: Ready to go to  
4 trial and I believe my friends at Quinn Emanuel are  
5 ready to go to trial and as Your Honor is aware, we'd  
6 settle with the Lyondell directors and officers.  
7 We advised chambers on Friday that we reached an agreement  
8 in principle to settle with Mr. Bigman and Mr. Floor  
9 and Your Honor adjourned the Motion to Dismiss --

10 JUDGE MARTIN GLENN: Right.

11 SIGMUND WISSNER-GROSS: -- that  
12 otherwise was to be heard today. So all that  
13 is left in the Bovadnik action, significant though  
14 it be, the claims against the Access Defendants,  
15 we're ready to go to trial, they're ready to go to  
16 trial. We believe that --

17 JUDGE MARTIN GLENN: And the discovery  
18 that anybody wanted with respect to actual fraudulent  
19 conveyance was done --

20 SIGMUND WISSNER-GROSS: Completed --

21 JUDGE MARTIN GLENN: -- it's the same  
22 discovery.

23 SIGMUND WISSNER-GROSS: Completed years ago.

24 JUDGE MARTIN GLENN: Okay.

25 SIGMUND WISSNER-GROSS: And in fact we've

1 been going through a pretty rigorous exercise with the  
2 Access Defendants' counsel to try see what exhibits the  
3 parties can agree on. We've given them a comprehensive  
4 list of trial exhibits. Those trial exhibits include  
5 evidence that relates both Count I and Count II.  
6 Relates to actual, intentional fraudulent transfer  
7 claim.

8 The same evidence is going to relate  
9 to some of the other claims, such as the Luxemburg claim.  
10 So from our perspective, the same evidence is going in  
11 at trial. Many of the facts relating to --

12 JUDGE MARTIN GLENN: The Luxemburg claim  
13 that couldn't go away. I don't know if you wish to side  
14 with Bigman and Floor, but I guess --

15 SIGMUND WISSNER-GROSS: Well, Your Honor,  
16 you'll probably find that those are the most interesting  
17 claims at trial.

18 JUDGE MARTIN GLENN: I'm not so sure about  
19 it. I've read the expert affidavits or reports on  
20 Luxemburg law, some of the times, actually. So anyway.

21 SIGMUND WISSNER-GROSS: But, Your Honor,  
22 from our perspective, the same facts will be presented  
23 at trial, whether Count II were reinstated or not.  
24 As best as I can discern from the position from the Access  
25 Defendants, they're articulating some legal grounds that

1 they think is a bar to Count II. Some of those legal  
2 grounds have already been rejected by Judge  
3 Gerber.

4 JUDGE MARTIN GLENN: You set that out in  
5 your letter.

6 SIGMUND WISSNER-GROSS: Right. So, Your  
7 Honor, we don't see any basis for a delay. We cited  
8 authority for why, in light of Judge Gerber's explicit  
9 reliance on the Hoffman ruling on intentional fraudulent  
10 transfer to dismiss the intentional fraudulent transfer  
11 claim in Count II in the Bovadnik action, now that  
12 that's been vacated by Judge Cote, we think it follows  
13 pretty clearly that Count II should be reinstated.

14 Count II, in our original complaint,  
15 consisted of four paragraphs. In the second amended  
16 complaint, which is the operative complaint here, we have  
17 place holders for those four paragraphs.  
18 There's no motion practice that needs to occur.  
19 Those four allegations could just be --

20 JUDGE MARTIN GLENN: You certainly didn't  
21 raise a -- I do want to hear from Quinn Emanuel on  
22 this issue, because I know in their letter that they  
23 seem to be saying there were a host of legal issues  
24 raised, but I must say, when I read Judge Cote's  
25 opinion and saw the basis on which she dismissed the

1 actual fraudulent conveyance claim in Bovadnik, my  
2 reaction was, okay, the actual fraudulent  
3 conveyance, you know, unless somebody told me  
4 that there was discovery that hadn't been done  
5 and needed to be done, maybe if there was, it  
6 would happen very quickly, but I didn't see a  
7 license for not including the claim back in and  
8 if there -- I guess Count II, and if there  
9 are legal arguments why the Defendants believe  
10 the claim is necessarily deficient and they're  
11 raising a defense, we'll hear  
12 it.

13 I don't have any more patience for  
14 motions before we go to trial, let me put it that  
15 way. I'm -- you know, I carved out time and am certainly  
16 prepared to go to trial. And I was concerned about  
17 the discovery issue, because I didn't know, but you've  
18 answered my question about that. Mr. Werder or one of  
19 his colleagues is going to address the Court on it, so  
20 I'm not ruling it. But that was my initial reaction,  
21 it was okay, Judge Cote decided the claim is back in.

22 And unless it altered the evidence that  
23 was going to come in at trial and how quickly she's  
24 going to rule on the Motion for Reconsideration,  
25 I don't think it's going to dramatically alter what

1 evidence comes in. And, you know, before the end of  
2 the trial she's re-thought her ruling, we'll  
3 -- I'll deal with that accordingly at the time.

4 SIGMUND WISSNER-GROSS: So we agree  
5 the evidence will not be altered in terms of the  
6 form of the evidence that comes in, whether Count  
7 II is reinstated or not. As we see it, Quinn  
8 Emanuel advanced really three basic arguments,  
9 legal arguments, that it should not be reinstated.  
10 And to the extent it's necessary to get into this  
11 further, Ms. Orenstein will address that.

12 But they argue that  
13 imputation -- the imputation ruling by Judge  
14 Cote does not apply to the claims against Bazell  
15 (phonetic). We think that Judge Gerber rejected that.  
16 We --

17 JUDGE MARTIN GLENN: Yeah, you  
18 addressed in your letter the collapsing  
19 doctrine of --

20 SIGMUND WISSNER-GROSS: Right.

21 JUDGE MARTIN GLENN: -- Judge Gerber's  
22 ruling.

23 SIGMUND WISSNER-GROSS: Correct. And,  
24 Your Honor, if necessary we can cite to other  
25 authority that's out there supporting what Judge Gerber

1 held on that. They argue and they advance an argument  
2 on the contention guarantee theory. That's again a legal  
3 issue. We have a footnote saying I think  
4 they're completely wrong on that.

5 Again, it's a legal issue. And they  
6 argue that it will be most efficient from a judicial  
7 perspective to not try Count II as part of this trial.  
8 We think the exact opposite.

9 JUDGE MARTIN GLENN: Yeah, I just  
10 want to do this once.

11 SIGMUND WISSNER-GROSS: Right.  
12 And we agree with that, Your Honor.

13 Your Honor, I'm happy to cede the  
14 podium to Quinn Emanuel, unless you --

15 JUDGE MARTIN GLENN: No, why don't you  
16 do that. Why don't you cede the podium and then,  
17 you know, your letter had the joint statement.

18 SIGMUND WISSNER-GROSS: Correct.

19 JUDGE MARTIN GLENN: You identified  
20 issues where parties haven't entirely agreed yet  
21 and we'll come back and we'll talk about that.  
22 Okay?

23 SIGMUND WISSNER-GROSS: Very good,  
24 Your Honor.

25 JUDGE MARTIN GLENN: All right.



1 Mr. Kirpalani.

2 SUSHEEL KIRPALANI: Good afternoon,  
3 Your Honor. Susheel Kirpalani from Quinn Emanuel  
4 on behalf of the Access Defendants.

5 We wrung our hands for several days  
6 as to whether we should try and explain why we thought  
7 Judge Cote's decision has no bearing or in fact it  
8 has any bearing. It actually bears that there is no  
9 intentional fraudulent transfer claim that could be  
10 stated in the Bovadnik action, because the transfer  
11 was not even a Lyondell entity.

12 However after realizing that it's going  
13 to be an uphill battle, because I don't think I  
14 want to do this twice. We talked about it at  
15 length before taking the time to prepare  
16 the brief and all of that. We still thought  
17 it was important just to outline. No, it's not  
18 about a discovery issue, but it is about a real trial  
19 issue and I know, Judge, that you care  
20 about that.

21 We had meets and confers at my  
22 urging, way before they were due, with counsel  
23 for the Trustee to try to understand how are you  
24 going to put on your case as a Plaintiff. You can't  
25 string together a bunch of e-mails and

1 have your expert sit up there like a fact  
2 witness. They disagreed with that. They think  
3 they can and that will come to you at the right time.

4 You have alleged perpetrators of  
5 a fraud. The fraud is allegedly through -- perpetrated  
6 against my client, Mr. Bovadnik and it's \$6 billion  
7 of equity in the sale. But we just learned that  
8 you're not going to call Mr. Smith, you're not going  
9 to call Mr. Dinacola (phonetic), you're not going to  
10 call any of the inner circle people that are allegedly  
11 the perpetrators of your master mind fraud.

12 So it's disingenuous to tell the Court  
13 that it's the same type of evidence that would go in  
14 on Count I versus Count II. I would beg to differ with  
15 that. If counsel feels they can meet a clear an --

16 JUDGE MARTIN GLENN: This could be  
17 answered if they, you know, if they --

18 SUSHEEL KIRPALANI: That is our understanding  
19 and we do have their witness lists as of -- it's just  
20 preliminary, but this was after we filed our brief, so  
21 they clearly know that we've joined this issue.

22 I don't know how a Plaintiff in an intentional fraudulent  
23 transfer action meets a clear and convincing evidentiary  
24 burden without calling the witnesses.

25 And you're going to hear in a moment when

1 I put the podium back to Mr. Wissner-Gross that we  
2 are taking a hard line on a bunch of internal e-mails  
3 at Lyondell, for which no proper foundation was ever  
4 laid during discovery, that they think are just all  
5 going to come in. And then they can spin them any way  
6 they want. That's not way -- at least we're not going to  
7 willingly do that.

8 And it's different, of course, on the  
9 Access side. If there are e-mails, if there are Owen  
10 Cardence (phonetic) e-mails, we're not making a fuss about.

11 JUDGE MARTIN GLENN: You're talking  
12 about Lyondell e-mails before the merger?

13 SUSHEEL KIRPALANI: Yes, Your Honor.  
14 Yes, Your Honor.

15 So yeah, the alleged intentional  
16 fraudulent scheme relates to a period of a few weeks  
17 before my client met with the principal of -- or the CEO  
18 of Lyondell Chemical Company and the allegation is that  
19 Mr. Smith, along with an inner circle, the so-called inner  
20 circle, which I don't believe actually exists in terms of  
21 being an alleged bad actor, but that's their  
22 theory that they are alleged bad actors. And that  
23 they somehow did something with projections that were  
24 inappropriate and that my client relied on these things,  
25 all of which we'll have time to explain to you over a few

1 weeks, and to start don't hold any water.

2 But in terms of the going forward  
3 of the evidence, we're just scratching our heads trying  
4 to understand how is that you are taking the position  
5 that this is an intentional fraud claim and you're not  
6 even going to call the witnesses that you say perpetrated  
7 this scheme.

8 JUDGE MARTIN GLENN: I think his -- you  
9 said in your letter Judge Cote set a high bar for an  
10 intentional fraudulent conveyance claim. You know, I --  
11 Smith was obviously deposed I assume.

12 SUSHEEL KIRPALANI: Oh, yeah. His  
13 deposition can come in, I mean --

14 JUDGE MARTIN GLENN: Was it a video  
15 deposition?

16 SUSHEEL KIRPALANI: I don't believe that  
17 they videoed Mr. Smith.

18 JUDGE MARTIN GLENN: Is he in subpoena  
19 range of the Court?

20 SUSHEEL KIRPALANI: No. He lives in Texas, I  
21 believe. In fact all the Lyondell management, they were from  
22 Texas.

23 JUDGE MARTIN GLENN: Yes.

24 SUSHEEL KIRPALANI: The cell management was in  
25 Europe. We pointed out the issues we pointed out in terms of

1 why we think legally --

2 JUDGE MARTIN GLENN: It sounds like you'd be  
3 happy if you're correct. You should be happy that they're  
4 not going to call the alleged wrongdoers.

5 SUSHEEL KIRPALANI: Actually, I think the  
6 best way for this case to be conducted and Mr. Smith and  
7 Mr. Bovadnik explain the whole thing and Your Honor can  
8 decide and then you'll see all the holes in the theory.  
9 That's what I think, but the Plaintiff doesn't seem to  
10 agree with that.

11 JUDGE MARTIN GLENN: Well, I can't force  
12 them to come. You can't force them to come. Whether  
13 with Mr. Wissner-Gross has an agreement that he will come  
14 testify if they want him, I don't know. But he'll either  
15 come and sit in the witness stand or he won't. And if  
16 he's not there, since he's not, you know, they can use his  
17 deposition, you can use his deposition, too.

18 SUSHEEL KIRPALANI: And we may. If an  
19 intentional fraud claim is being brought in this case and  
20 that my client is somehow liable as a fraudulent transferee  
21 of that claim, we may seek to ask people to come and explain  
22 what happened, even though we don't control those witnesses.

23 JUDGE MARTIN GLENN: I mean it's -- you  
24 know, because it's the intent of the transferor --

25 SUSHEEL KIRPALANI: Right.

1 JUDGE MARTIN GLENN: -- transferees can often  
2 find themselves in a difficult position with an actual  
3 fraudulent conveyance claim, because it's the intent of  
4 the transferor. You may have defenses, factual defenses  
5 as well as legal defenses, but I guess the Plaintiff is  
6 going to have the burden.

7 SUSHEEL KIRPALANI: And like I said we may  
8 seek to ask them to come and testify voluntarily, if in  
9 fact these issues are going to be issues to be tried.  
10 We can't live with a world where someone is going to try a  
11 case based on e-mails out of context, we just can't do that.

12 JUDGE MARTIN GLENN: Look, I, from reading  
13 the letters, whether you're able to work these issues out  
14 or not, it's obvious that there are business records,  
15 evidentiary foundation issues, about Lyondell documents.  
16 It was unclear to me what those documents were.

17 SUSHEEL KIRPALANI: These are e-mails.  
18 Internal banter type e-mails.

19 JUDGE MARTIN GLENN: Okay.

20 SUSHEEL KIRPALANI: That's our view.  
21 So they're not business records. I mean they can  
22 bring a custodian in and say you pulled this off an  
23 electronic server, that's not the law, you know.  
24 E-mails between people off an electronic server  
25 doesn't make them business records.

1                   And since -- unlike on our side, on  
2     the Access side, if there are e-mails of ours, well  
3     obviously they would be for evidentiary purposes,  
4     it goes to weight. For evidentiary purposes, they're  
5     admissions. That's not true for Lyondell.

6                   JUDGE MARTIN GLENN: So this is sort of  
7     aimed at everybody. Certainly you can stand on  
8     rights -- on foundation grounds. This has come up  
9     before me before, some combination in terms of the  
10    parties -- how -- are doing, frivolous motion objections,  
11    frivolous isn't a legal standard anymore. If there  
12    aren't very serious foundation objections, I'm willing  
13    to take trial time to inquire it.

14                  So I'm doing one of a couple of things.  
15    I have a sponsoring party, you'll know which -- I've  
16    already identified, which -- agreed to and the  
17    sponsoring party, if they can get an affidavit,  
18    that would be a proper foundation on which you could  
19    depose them. And trying to resolve this, I'm willing  
20    to take trial time to do it.

21                  Once I actually told a party that  
22    it was the time to trial and so fine, but I'm just  
23    telling you that I've been hearing in this, and you  
24    laid a proper foundation, I concluded that this is  
25    objection that never should have been made. I'm

1 charging the time to the objecting party, never a  
2 responsory party. And I did not know it, the objections  
3 got looked at and it didn't happen.

4 But one other thing, I thought they  
5 were serious motion issues, particularly the ones in  
6 terms of the exhibits. I set a deadline for the sponsoring  
7 party to put it in, if they thought they would get any  
8 affidavit or declaration to establish the foundation.  
9 It might be an objector going in to depose them.  
10 Just to find out if you want to test them and the  
11 subject and find out during these aren't an issue  
12 and this some -- depositions.

13 But I'm not saying -- what I mean is  
14 I don't have any lists of exhibits. Is it five,  
15 is it 100?

16 SUSHEEL KIRPALANI: Yeah, let me try to  
17 give a little bit of context.

18 JUDGE MARTIN GLENN: Okay.

19 SUSHEEL KIRPALANI: Okay? Because it's  
20 really -- it does --

21 JUDGE MARTIN GLENN: I don't want to  
22 decide -- I want to make it absolutely clear. You've  
23 got a sort of foundational objection. I'm not telling  
24 -- you know, you're going to make it and I'm going to  
25 decide it on the merits of it. So I'm not



1 trying to browbeat you out of an objection, but I'm  
2 not a big fan of taking trial time to do it.

3 SUSHEEL KIRPALANI: Right. So okay,  
4 here's the situation. It does dovetail with this  
5 intentional fraudulent transfer issue.

6 Allegedly there's an inner circle of  
7 people at Lyondell Chemical Company who are not within  
8 our control. These people were deposed. The Trustee  
9 chose, during the deposition, it was actually the  
10 predecessor, it the Creditors Committee, not to ask  
11 questions about e-mails that the sound bites  
12 sounded good to them for purposes of filing the  
13 complaint where they have to seek to understanding.

14 I live in this world. I know how it  
15 works. But the time for that and the discovery is past.  
16 So having not asked any questions about those e-mails,  
17 we didn't either. So now comes the time to prove  
18 the case.

19 If you say, Judge, that well, Mr.  
20 Kirpalani, you're playing hard ball by not letting  
21 them put these e-mails in. But wait a second,  
22 they're not even bringing the witnesses in  
23 because they just settled with them, for whatever  
24 they settled with them for, and they're saying they  
25 just want to get a bunch of e-mails in so they can string

1     them along with some expert who had no first hand  
2     knowledge of what actually people meant,  
3     what they were saying, what was the context, what  
4     was going internally at Lyondell. And these are not  
5     even admissions of  
6     ours.

7                     So this is the actual practical real  
8     world issue that we're --

9                     JUDGE MARTIN GLENN: How many e-mails  
10    are we talking about?

11                    SUSHEEL KIRPALANI: I think it's quite a  
12    bit. About a hundred. Or more, I'm told by another  
13    colleague.

14                    We have legal arguments, but I know we'll  
15    save those for trial. Okay? The legal arguments, just to  
16    be clear, have to do with the fact that Judge Cote said  
17    Mr. Smith, on an agency principle, can tag Lyondell  
18    Chemical Company.

19                    Count I and II, the toehold transfers,  
20    which Your Honor will remember from July and the  
21    summary judgment. These are transfer from his cell to  
22    my client.

23  
24                    So I don't think whatever Mr. Smith  
25    and his inner circle knew had anything to do with the

1 transfer of cash from Bazell (phonetic), from the  
2 Bazell bank account to my client. They had some odd  
3 collapsing theory that they managed to convince Judge  
4 Gerber in a dicta footnote, don't worry about  
5 it, it's going to work out once we get up at trial.  
6 It was a long time ago. Discovery is over. We still  
7 don't understand how this theory works.

8 JUDGE MARTIN GLENN: Uh-huh. A very long  
9 time ago.

10 SUSHEEL KIRPALANI: Yes. I guess I've  
11 taken up more than my share of time.

12 JUDGE MARTIN GLENN: No, that's okay.

13 SUSHEEL KIRPALANI: I just think it's  
14 difficult for us to deal with issues like will you  
15 consent to the admissibility of this exhibit, which by  
16 the way we're going to use to prove an intentional  
17 fraudulent transfer claim against you and no, we're not  
18 going to bring the person who wrote the e-mail to court  
19 so you can have an opportunity to --

20 JUDGE MARTIN GLENN: Let me answer this.  
21 As I suggested, I'm not a big fan of taking an amount of  
22 trial time over -- it's an important issue, I'm not  
23 disputing that. What's your view about requiring a  
24 sponsor to -- as for the competent evidence or declaration,  
25 not hearsay, but competent evidence or declaration in

1 regard to deposing him? You know trial is slated for  
2 October 17th, there's not a lot of time.

3 SUSHEEL KIRPALANI: That's true.

4 I don't think there's any rational way for me to  
5 oppose that. That is exactly -- so you're not sitting  
6 here to call balls and strikes in a deposition room,  
7 but yeah, if that's what they want to do bring in e-mails  
8 that are not admissions of any party in this case,  
9 hundreds of them, and expect we're just going to let  
10 them come in so that they can string a story along, we  
11 can't do that. We'd be --

12 JUDGE MARTIN GLENN: I'm not -- I  
13 don't -- go ahead.

14 SUSHEEL KIRPALANI: But so of course,  
15 if they want to prepare a declaration with sufficient  
16 time for us to read it and then look at the other  
17 e-mails from the time. we have to do all the work,  
18 because we're going to need -- that period and  
19 then go and depose him, of course we'll do that.

20 JUDGE MARTIN GLENN: Well, the -- I do  
21 enforce the evidence rules.

22 SUSHEEL KIRPALANI: I know.

23 JUDGE MARTIN GLENN: And if it's more a  
24 burden, a declaration, you want to set a deadline for  
25 doing it, fine. I mean, you know, if there's evidence

1 that establishes the necessary foundation, I'll rule  
2 on the objection. If they're right, it will come in.  
3 But it's going to be a risk on them.

4 I just don't know, if it's 100 exhibits,  
5 I don't want to have a string of witnesses that come in  
6 whose only purpose is to attempt to lay a foundation  
7 for 100 e-mails.

8 SUSHEEL KIRPALANI: Right. This is not an  
9 authenticity fight. It's not like we're saying we don't  
10 believe those e-mails came off of Lyondell's server.  
11 Rather we're saying they're not business records,  
12 not meeting minutes or something  
13 like that that's a business record.

14 This is, you know, me talking to Rex  
15 about how I think so and so feels about it. That's  
16 not a business record.

17 JUDGE MARTIN GLENN: So you're, at the  
18 end of day, it sounds like you may have multiple per se  
19 objections to an e-mail --

20 SUSHEEL KIRPALANI: Right.

21 JUDGE MARTIN GLENN: -- and establishing  
22 the foundations for that as can be pre-trial.

23 SUSHEEL KIRPALANI: True. Although there  
24 may be other e-mails that don't have any hearsay, not  
25 second level hearsay, just first level hearsay. I

1 personally haven't looked at all 100 and so, but  
2 I'm certain that we can do that.

3 And if they want to submit  
4 declarations -- I just want to be clear. This is not  
5 like we're saying no, we disagree that that's the  
6 10K of Lyondell Chemical Co. Or no, we disagree that  
7 those are the meeting minutes of the Board of Lyondell  
8 Chemical.

9 JUDGE MARTIN GLENN: You're not -- I'm not  
10 pinning you down as to specific exhibits, but your problem  
11 isn't about minutes and things like that.

12 SUSHEEL KIRPALANI: It's about spin.

13 JUDGE MARTIN GLENN: They not  
14 self-authenticating, they're easily authenticated.

15 SUSHEEL KIRPALANI: Right. It's about  
16 e-mails, communications between people that are cherry  
17 picked from a period of time where there are many others  
18 and many conversations that I'm sure happened around those  
19 e-mails. I think that's what we're dealing with.

20 JUDGE MARTIN GLENN: So what -- let's assume  
21 those e-mails are admissible, that they sell it, do you  
22 have additional exhibits you're going to mark as a result?

23 SUSHEEL KIRPALANI: It could be. Yeah, I  
24 would say -- I would say definitely. Because I'm sure  
25 there's plenty of Lyondell internal e-mails that

1 say opposite things of what they think, I'm certain  
2 of it.

3 JUDGE MARTIN GLENN: Okay. All right.  
4 Let me hear from Mr. Wissner-Gross about this issue,  
5 okay?

6 SIGMUND WISSNER-GROSS: Your Honor --

7 JUDGE MARTIN GLENN: What's your theory  
8 of admissibility of e-mails not between any parties?

9 SIGMUND WISSNER-GROSS: I'm going to let  
10 Mr. Weddle, who's been in charge of that, so I'm going  
11 to defer to Mr. Weddle to do a better job that I would  
12 addressing that point, Your Honor.

13 But if I could just put this a little  
14 bit in context. We have given the other side a list  
15 of deponents that we want to -- that we think should --

16 JUDGE MARTIN GLENN: Are you really not  
17 calling Mr. Smith as a witness? He was part --

18 SIGMUND WISSNER-GROSS: Your Honor, Mr.  
19 Smith was --

20 JUDGE MARTIN GLENN: -- part of the whole  
21 case.

22 SIGMUND WISSNER-GROSS: Mr. Smith was  
23 deposed. Mr. Salvan (phonetic) was deposed, was  
24 videotaped and I anticipate that we'll give you all  
25 or most of the chunk of Mr. Salvan's videotape.

1 JUDGE MARTIN GLENN: Hopefully it's not  
2 going to be all. I mean I --

3 SIGMUND WISSNER-GROSS: We'll give you --

4 JUDGE MARTIN GLENN: Just so I'm clear, I  
5 think I probably said this already, I don't want  
6 people to put, you know, dope on deposition on the  
7 record. It's going to be page and line number.

8 SIGMUND WISSNER-GROSS: That's what we're  
9 doing.

10 JUDGE MARTIN GLENN: Okay.

11 SIGMUND WISSNER-GROSS: But by my count,  
12 there are 43 witnesses that we're going to be doing  
13 selective deposition designations for 43. And every  
14 person that was involved in this refreshing process  
15 was deposed.

16 Quinn Emanuel was present at every  
17 deposition. They had an opportunity to ask any and  
18 every question they wanted. He had opportunities to  
19 ask the questions we wanted. There was full discovery  
20 on the subject.

21 Given where we are in the case, it's our  
22 assessment, with the number of expert witnesses we have  
23 and other witnesses we're going to question live, in  
24 the trial climate live, that the most efficient way of  
25 proceeding is to get the record in through deposition



1 designation.

2 JUDGE MARTIN GLENN: Look, if the witnesses  
3 are not within the subpoena power of the Court, you're  
4 entitled to a deposition.

5 SIGMUND WISSNER-GROSS: Virtually all of  
6 them are in Texas.

7 JUDGE MARTIN GLENN: Okay. So I mean --

8 SIGMUND WISSNER-GROSS: And by the way --

9 JUDGE MARTIN GLENN: There's nothing  
10 magical about this --

11 SIGMUND WISSNER-GROSS: But --

12 JUDGE MARTIN GLENN: Stop. Stop.

13 When I was in practice and I used to train our young  
14 litigation associates about taking depositions, one of  
15 the points I always made was if there are any exhibits  
16 that you're going to want to use a trial, you need to  
17 establish a foundation for them, if you can't get the  
18 witness at trial and either that or send out a  
19 request for admissions early on and, you know, if  
20 they refuse to admit, take the deposition and  
21 establish the foundation.

22 It's kind of late to -- you don't get much  
23 traction from me saying well, they were at the  
24 deposition, they could have asked about those exhibits.  
25 You were at the deposition, you could have asked about them.

1 Having somebody show up for the deposition and asking  
2 him questions about a document doesn't necessarily  
3 establish the foundation for the exhibits.

4 So, you know, this has come up a bunch of  
5 times and on this case, when its' come up, I told you  
6 it's been approaches I've taken, because I like to allow  
7 parties to try and prove their case, but I'm not going  
8 tell you how to put your case on. You think you've got  
9 competent evidence to establish the foundation or  
10 letting -- so to speak and establish a foundation  
11 for the exhibits you want to have. Fine. You can  
12 take your shot at and if you don't get it in,  
13 then you haven't gotten in. It's, you know.

14 But what I've done before and I told Mr.  
15 Kirpalani is say okay, I don't want to have to have a  
16 stream of witnesses testifying, the sole purpose of which  
17 is to establish foundation for exhibits and so I said,  
18 because I take written direct, I take -- I go off and get  
19 your declarations and let the other side cross, you know,  
20 depose them and cross examine them and then I rule on them.

21 So it's up to you. I mean if you think  
22 you've got the evidence to overcome any objection from  
23 Mr. Kirpalani, fine. Go for that and you'll get it in  
24 or you won't get it in. I can't -- I'm not going to  
25 do any favors. I'm not going to do any Mr. Kirpalani

1 any favors. I'm going to decide it based on if there  
2 are objections to lack of foundation, I'm ruling on them.  
3 If you believe you've got the evidence to support the  
4 admissibility of the documents, fine. But we're  
5 going to have to decide whether you are allowed to  
6 put the declaration, because trial is really upon us.

7 I'm going to give you a week to do  
8 the -- to get the declarations to lay a foundation and  
9 then Mr. Kirpalani can then -- then his colleagues go  
10 take the depositions if they want.

11 SIGMUND WISSNER-GROSS: Well, Your Honor,  
12 I can tell you that getting declarations from former  
13 Defendants, as well as people that were affiliated  
14 later on, represented by common counsel with former  
15 Defendants, is not realistic. These  
16 are people that included --

17 JUDGE MARTIN GLENN: Under cooperation  
18 agreements maybe?

19 SIGMUND WISSNER-GROSS: Well, I can't  
20 comment on, you know, a confidential settlement  
21 agreement, but getting -- the notion of getting a  
22 declaration is not feasible.

23 And this really isn't a case of stringing  
24 together e-mails, as Mr. Kirpalani said. We're talking  
25 about quite a number of people, some of whom who have

1 already submitted declarations previously in the case  
2 and were deposed about their declarations.

3 So from our perspective, we do think --

4 JUDGE MARTIN GLENN: Let me ask you this  
5 then, Mr. Wissner-Gross. Rather than have a -- you're  
6 offering the exhibits, you're going to have the burden  
7 of establishing the proper foundation for them. If you  
8 think you've got devices for it, fine. If you don't,  
9 you say you won't be able to get declarations.

10 I accept your statement as true. I'm  
11 surprised you don't have -- the people who settled  
12 with you, you don't have some cooperation agreement  
13 with, but how do you want to proceed? You know, you  
14 don't have much time. You can -- if you want to chase  
15 them down, subpoena them, take their depositions.  
16 Say there's an issue of -- I'm not going to open up  
17 depositions again on the merits, but if you got exhibits  
18 that you want to get in, Mr. Kirpalani  
19 says 100 plus e-mails, I'll let you -- I'll give you a  
20 very short period of time to, you know, get subpoenas  
21 if they're in Texas or as mentioned here, you want to  
22 get them served in Texas and take their  
23 depositions, it's your call.

24 SIGMUND WISSNER-GROSS: Justin Weddle  
25 will address some of these points.

1 JUDGE MARTIN GLENN: Okay.

2 JUSTIN WEDDLE: Thank you, Your Honor.

3 Justin Weddle from Brown Rudnick.

4 There are two separate issues here, as  
5 Your Honor, I think, indicated. There's an issue of  
6 proper business records foundation, but the rules  
7 expressly say can be laid by any proper custodian, right?

8 And in fact Your Honor's -- what Your Honor  
9 was discussing about a potential means of proceeding is  
10 actually more complex than the rules of evidence require,  
11 because the rules of evidence say two important things.  
12 One is they say under 803.6 that any proper custodian  
13 can lay the business records foundation. So it doesn't  
14 have to be the author of an e-mail for example.

15 And they also say that, under 902.11 that  
16 business records foundation can be laid by declaration  
17 and that declaration suffices unless the party objecting  
18 demonstrates an unreliability.

19 JUDGE MARTIN GLENN: Let me ask you this  
20 though. Let's say there's about 100 plus e-mails among  
21 these people. How do you establish whether an e-mail  
22 is a business record? It typically doesn't satisfy  
23 the test of the business records exception.

24 JUSTIN WEDDLE: Certainly they do,  
25 Your Honor. There's no rule that business records

1 -- that e-mails can't be.

2 JUDGE MARTIN GLENN: I understand that.  
3 If you decide that you have a proper -- that you can  
4 lay a proper foundation and those are within the  
5 limits -- and I hear an objection, I'll hear it.

6 If the proper foundation has been laid  
7 for it, it sounds like you've got an issue of whether  
8 e-mail -- the e-mail specifically in that satisfies  
9 the business records exception, yes, if we would have  
10 a declaration from a custodian who was not involved,  
11 there's not -- it's e-mails. Those come all the  
12 time, you know. Business records are accounting records,  
13 they're loan servicing records, they're things of  
14 that nature.

15 If you think -- I'm not pressuring to do  
16 anything.

17 JUSTIN WEDDLE: I think we have the  
18 foundation, Your Honor.

19 JUDGE MARTIN GLENN: You take your  
20 chances.

21 JUSTIN WEDDLE: I think we have the  
22 foundation, Your Honor and you'll see it. But you know,  
23 just to sort of add a little color to this, these are not  
24 idle chit chat e-mails, you know. It's like an e-mail  
25 that says here are the numbers that we just made or

1 something like that.

2 So it's pretty clear from the fact -- these  
3 are e-mails that are business related. They're  
4 substantive discussions about business related issues  
5 among Lyondell people.

6 JUDGE MARTIN GLENN: You know,  
7 contemporaneous records that record an act or event  
8 at or about the time that it's reflected in a business  
9 record and it's the practice of the business to maintain  
10 the record, I don't -- you know, I don't want to  
11 doing anything -- but the business records  
12 exception has got a number of very specific  
13 requirements.

14 I'm not forcing you to do anything.  
15 You're on notice from Mr. Kirpalani that he'll object  
16 and you're on -- it sounds like you've got -- you know,  
17 you reject declarations and you don't want to  
18 depose the people, fine. You'll offer the  
19 exhibits and they'll come in or they won't come in.

20 I don't do anybody any favors. If  
21 there's a serious objection to these exhibits,  
22 I will rule on it. If the evidence is in the record  
23 to establish that there is a foundation, they'll get  
24 admitted. If it's a question of well, we've got  
25 a witness scheduled for next week, it's sometimes

1 conditional to admit subject to a motion to  
2 strike if the foundations isn't subsequently laid,  
3 because there's not a jury, okay.

4                   You've got the burden, okay?  
5 -- declarations and you have your depositions,  
6 that's fine, that's your best shot.

7                   JUSTIN WEDDLE: All I'm saying is we can  
8 lay the foundation with a custodian. We don't have to do  
9 that Mr. Kirpalani is saying which is to call the people  
10 involved in the chain to discuss what --

11                   JUDGE MARTIN GLENN: -- what you're going  
12 to have to do. The issue's been raised. Are you calling  
13 a custodian?

14                   JUSTIN WEDDLE: So what we propose to  
15 do is either reach agreement as to a custodian, call  
16 the custodian, or proceed by this 902.11 rule which is --

17                   SIGMUND WISSNER-GROSS: I thought you just  
18 told me you couldn't get declarations.

19                   JUSTIN WEDDLE: We can get a custodian  
20 declaration, Your Honor. So the -- it's a difference  
21 between asking the people who are writing and receiving  
22 the e-mail, you know, what else is going on around here,  
23 can you explain this. That's additional. That's external  
24 to the e-mail itself. The e-mail itself could be a  
25 business record --



1 JUDGE MARTIN GLENN: All right.

2 JUSTIN WEDDLE: -- and then someone could  
3 explain it.

4 JUDGE MARTIN GLENN: That's fine. When  
5 are we going to give them the custodian declaration.  
6 One week.

7 JUSTIN WEDDLE: Okay.

8 JUDGE MARTIN GLENN: And then Mr. Kirpalani,  
9 schedule a deposition probably on the eve of trial.  
10 If you've established the required foundation, the  
11 exhibits will come in evidence. If they don't -- if you  
12 don't, they won't come in. So it's really as simple as  
13 that.

14 JUSTIN WEDDLE: I fully understand, Your  
15 Honor.

16 JUDGE MARTIN GLENN: What I don't want to  
17 do, if you have a week to do the custodian declaration  
18 and Mr. Kirpalani is not able to take the deposition, well  
19 both sides can brief the issue on whether the foundation  
20 has been properly laid and I'll rule before an October 17th  
21 trial --

22 JUSTIN WEDDLE: The only point is we  
23 don't have to call Dan Smith to explain --

24 JUDGE MARTIN GLENN: I'm not telling you  
25 who to call.

1 JUSTIN WEDDLE: Right.

2 JUDGE MARTIN GLENN: I'm just telling -- you  
3 want to offer the exhibits. If you lay the foundation,  
4 they'll come in. If you don't, they're not. Okay?

5 JUSTIN WEDDLE: I've got that, Your Honor.

6 JUDGE MARTIN GLENN: So one week from today  
7 for the declarations. Mr. Kirpalani, it's going to be  
8 one witness, how quickly can you take the deposition?

9 SUSHEEL KIRPALANI: I'm sure we can do it in a  
10 week, if that.

11 JUDGE MARTIN GLENN: So a week for the  
12 deposition, whether it's going to be your declarant, your  
13 custodian. Take a deposition, okay?

14 JUSTIN WEDDLE: Thank you, Your Honor.

15 JUDGE MARTIN GLENN: So what other issues --  
16 just so it's clear, subject to any further ruling or  
17 judgment -- in the complaint and we'll proceed to trial,  
18 as to the other claims in the complaint, you can bring  
19 forth defenses in light of Mr. Kirpalani, that's fine.

20 And if Judge Cote changes her mind and it  
21 affects the outcome, well, we'll know that in due course.  
22 Okay?

23 So let me see, I had some other notes with  
24 some other issues I wanted to address. Okay. I do have  
25 opening statements, that was flagged as an issue. I think

1 90 minutes is -- should be more than sufficient for  
2 each side.

3 SUSHEEL KIRPALANI: And, Your Honor, if not  
4 all of it is used, then it doesn't count against --

5 JUDGE MARTIN GLENN: It's whatever you use.  
6 I allow 90 minutes, okay. Shorter may be better, okay,  
7 but I'll give each side up to 90 minutes.

8 I do like pre-trial briefs.

9 SUSHEEL KIRPALANI: Judge, I'm sorry to  
10 interrupt you. I had a question about this.

11 JUDGE MARTIN GLENN: Sure.

12 SUSHEEL KIRPALANI: We're happy to do that,  
13 obviously, working.

14 JUDGE MARTIN GLENN: I suspected you would  
15 be without my doing it.

16 SUSHEEL KIRPALANI: The issue is some  
17 pre-trial briefs they're written sort of as almost  
18 summary judgment briefs, which, you know, you have this  
19 citation and that document and this depo transcript and  
20 this case law.

21 Is that what you're looking for or do you  
22 just want what are your legal contentions, what's the  
23 governing law on standard of proof, solvency, reasonable  
24 value, forget about the facts. Okay, that's what I thought.

25 JUDGE MARTIN GLENN: What I usually ask for

1 is a brief that includes -- it's a memorandum of the  
2 elements of the claims and the constants. And very brief,  
3 you know, discussion of the facts, not detailed discussion  
4 of the facts, but what your side believes are the elements  
5 of the claims and defenses.

6 So as we go through the trial I have what  
7 is, you know, in my own mind is a checklist of okay, here  
8 are the claims, this is the element of the claim the  
9 Plaintiff has the burden of proving one, two, three, four  
10 five. The Defense has raised an objection by his defenses.  
11 Okay? And that's what I like to see. I mean it's along  
12 the lines of what we described.

13 SUSHEEL KIRPALANI: Yes. That's what we  
14 thought, we just wanted to make sure.

15 JUDGE MARTIN GLENN: Yeah, that's fine.

16 SUSHEEL KIRPALANI: There's no disagreement,  
17 just to be fair, he just didn't know either.

18 JUDGE MARTIN GLENN: No, it's discussed  
19 with both sides. That's what I'm -- I find most helpful  
20 not 100 page trial brief, but a brief that -- it's hard  
21 for me to keep track of each cause of action that's in  
22 this case. I've worked with this case  
23 for a long time, okay? And it's a checklist for me  
24 and my law clerks, okay?

25 These are the claims, this is the law

1 that's in the claims and these are the defenses that  
2 are being asserted. You may disagree as to what the  
3 elements are to be shown. Really post trial briefs.

4 SUSHEEL KIRPALANI: Okay. That was the  
5 second thing. Ms. Orenstein and I discussed a couple  
6 of weeks ago whether this dovetails with the contentions  
7 of fact. Should it be these are the checklist facts that  
8 are in dispute and then there would be proposed findings  
9 of back and post conclusion of law that detailed, okay,  
10 there's how we established or didn't establish that  
11 particular --

12 JUDGE MARTIN GLENN: Well, are you going  
13 to have a daily transcript, have you discussed that?  
14 Are we doing to have a reporter in here for a daily --

15 SUSHEEL KIRPALANI: We haven't discussed.

16 SIGMUND WISSNER-GROSS: I'm sure we  
17 could agree.

18 JUDGE MARTIN GLENN: Okay. For a long  
19 trial it's helpful, because you can't get read backs  
20 and I just find -- you know, you have to have a reporter  
21 come in and things like a lot of microphones and things  
22 like that are usually set up near the witness box.  
23 So I think -- I'm not forcing you to do it,  
24 but I think it would be helpful.

25 SUSHEEL KIRPALANI: We'll do it.

1 SIGMUND WISSNER-GROSS: We'll do it.

2 JUDGE MARTIN GLENN: Okay. I guess I have  
3 to say, the Court -- it's not the official transcript.

4 SUSHEEL KIRPALANI: Right.

5 JUDGE MARTIN GLENN: But it's helpful.

6 SUSHEEL KIRPALANI: So I mean it's a  
7 similar question. So on these contentions of fact,  
8 you know, for example the entity was rendered insolvent.  
9 That's a contention of fact. Or is it the entity was  
10 rendered insolvent because on such and such day so and so  
11 said this and such and such day so and so said that and  
12 we're going to bring in all these things and exhibits.

13 I was envisioning the streamlined  
14 version for the pre-trial contentions of fact and the  
15 chock full of support version when we have the support --

16 JUDGE MARTIN GLENN: Mr. Wissner-Gross.

17 SIGMUND WISSNER-GROSS: We're probably  
18 looking to go a little more detailed, but what I'll  
19 do is whatever format Your Honor would like it in,  
20 that's the way we'll present it. We can go either way.

21 Our only concern was that the conclusory  
22 presentation might get so conclusory as to not really be  
23 informative to Your Honor about the basic --

24 JUDGE MARTIN GLENN: But I think what I --  
25 look, I'm going to look at the disputed issues, elements

1 of the claims and the defenses in the statement of what  
2 the issues or the facts are and then at the end of the  
3 case, I'll make the --

4 SIGMUND WISSNER-GROSS: For example on  
5 inadequate capitalization, it's one thing to say that  
6 the company was inadequately capitalized. As another  
7 thing, we might give you sort of -- even at a high  
8 level, an overview of some of the basic facts that  
9 we're going to --

10 JUDGE MARTIN GLENN: That's helpful.  
11 You can -- but it's not 100's of pages of --

12 SIGMUND WISSNER-GROSS: I understand.

13 JUDGE MARTIN GLENN: Okay.

14 SIGMUND WISSNER-GROSS: That's fine.  
15 So we can the same counter story.

16 JUDGE MARTIN GLENN: Yes, I'm sorry.

17 SIGMUND WISSNER-GROSS: Okay.

18 JUDGE MARTIN GLENN: Okay. Mr.  
19 Kirpalani, do you have other questions?

20 SUSHEEL KIRPALANI: Well, yeah, I did.  
21 I didn't mean to interrupt your flow, but the other  
22 issues we have, we did the fact contentions, we did  
23 the pre-trial brief. I think opening arguments.

24 JUDGE MARTIN GLENN: -- your issue.  
25 Mr. Wissner-Gross.

1 SUSHEEL KIRPALANI: Proposed findings of  
2 fact, conclusions. Okay. Time allocation.

3 JUDGE MARTIN GLENN: Yes.

4 SUSHEEL KIRPALANI: We had a couple of  
5 meet and confers on this and our position was 50/50.

6 JUDGE MARTIN GLENN: That sounds fine to  
7 me. Mr. Wissner-Gross, you're okay with the 50/50?

8 Let me just stop? At least as to how  
9 I've -- we had this discussion about foundation issues  
10 on e-mails and I don't want to take trial time to do it.  
11 I mean the trial time will be objection and I'll rule.

12 I generally don't hear, you know, I might  
13 ask you briefly tell me what the foundation for this  
14 exhibit is. I don't do it as to 100 exhibits. But  
15 if you got a custodian -- if ou're resting on a  
16 custodian's declaration, it isn't going  
17 to change from exhibit to exhibit probably.

18 SIGMUND WISSNER-GROSS: We're fine with a  
19 50/50 split. Our concern was --

20 JUDGE MARTIN GLENN: I mean you said you --  
21 you don't control of these witnesses.

22 SIGMUND WISSNER-GROSS: And we don't  
23 control a lot of these non-party witnesses or former  
24 Defendants. And being we're concerned with the way the  
25 dialogue with Quinn Emanuel has been going, we made



1 progress on their exhibits,  
2 but on our exhibits somehow we didn't see reciprocity and  
3 what I was concerned with is that we'd be spending half  
4 of our trial time trying to establish a foundation with  
5 respect to what we think are fairly obvious business records.  
6 And there was my, you know, concern of a 50/50 split.

7 But it sounds like Your Honor is giving  
8 guidance as to how he'd like to proceed, so a 50/50 split  
9 is fine with us. That was the reason for my concern about  
10 just whether committing to it.

11 JUDGE MARTIN GLENN: What's going to happen  
12 is that we have foundation objections and you're each  
13 going to spend amounts of time. I shall -- both sides.  
14 What I didn't want to do is have a string of witnesses  
15 doing the foundation and a string of exhibits and trying  
16 to deal with that.

17 SIGMUND WISSNER-GROSS: Very good, Your  
18 Honor.

19 JUDGE MARTIN GLENN: Okay. I see you're  
20 satisfied with -- your witnesses as well?

21 SIGMUND WISSNER-GROSS: Yes.

22 JUDGE MARTIN GLENN: Okay. Are there any  
23 issues we missed?

24 SIGMUND WISSNER-GROSS: Some, Your Honor,  
25 include what your view is on experts. We've heard about

1 your fondness for Luxemburg law and Luxemburg experts.  
2 Our expert would be available to be present if Your  
3 Honor has any questions or there is cross of him on  
4 his expert issues. But I think both sides don't know  
5 what your preference is in that regard.

6 So if would be helpful to get your  
7 guidance as to whether you would prefer to have our  
8 experts available.

9 JUDGE MARTIN GLENN: That's a good point.  
10 Mr. Kirpalani, why don't you go first.

11 SUSHEEL KIRPALANI: Your Honor, this is  
12 something that we wanted raise as well.

13 JUDGE MARTIN GLENN: Who's your expert?  
14 He's -- expert.

15 SUSHEEL KIRPALANI: Yeah, it's Alex  
16 Schmidt of LaBon (phonetic) Schmidt. And we have  
17 Dutch law expert too.

18 But, Judge, these Luxemburg claims, we  
19 had attempted at one point in our lifetimes to move to  
20 dismiss on form, on convenient grounds, that was denied  
21 because Judge Gerber felt that even though it's not a  
22 country where story (phonetic) decises (phonetic)  
23 is followed, nevertheless that he could opine as to  
24 what a Luxemburg jurist might do on this situation.

25 Putting that to the side for a moment,

1 I'm not trying to say anything more than what I just  
2 did. And I think that's an accurate recitation.

3 JUDGE MARTIN GLENN: Do you agree, Mr.  
4 Wissner-Gross?

5 SUSHEEL KIRPALANI: That's okay. I'll  
6 buy him a beer.

7 But with respect to the Luxemburg claims,  
8 we were actually looking forward to hearing today's  
9 arguments. We haven't taken the time to worry about  
10 this, spend another \$50,000 working on Luxemburg  
11 translations.

12 Would the Court entertain -- I know -- I  
13 realize the magnitude of what I'm asking. Would the  
14 Court entertain a motion along the lines of what you  
15 undoubtedly and your clerks undoubtedly prepared for  
16 anyway for today, along the lines of that, because  
17 from our perspective these Luxemburg block things  
18 are out of left field. And I think it will help the  
19 trial.

20 If Your Honor says no, everything is  
21 staying in, and we think it's as good as any other  
22 option to just read the competing written things.

23 JUDGE MARTIN GLENN: -- two motions, I'm at  
24 two trials between now and trial in this case. One's  
25 a re-trial and one's that -- a day, but the other

1 is a re-trial. I have things stuck that I've got  
2 to get done, so I'm not anxious to have any motions.

3 SUSHEEL KIRPALANI: Written submissions.

4 JUDGE MARTIN GLENN: Both -- on experts?

5 SUSHEEL KIRPALANI: Well, it's just like  
6 two other treatises, I guess.

7

8 JUDGE MARTIN GLENN: Yeah.

9 SUSHEEL KIRPALANI: On prior law.

10 (Court's microphone has a lot of static)

11 JUDGE MARTIN GLENN: I spoke with Judge  
12 Gerber and I thought he summarized the law on -- I guess  
13 it is, I don't know -- I guess originally he dismissed  
14 a -- to amend the claims against them. I thought he  
15 accurately saw as to how it's done. What -- answering  
16 your question -- to me. Mr. Wissner-Gross, Mr. Kirpalani?  
17 Maybe to try to -- on how you might typically -- the  
18 declarants I required didn't -- for  
19 cross examination.

20 And another thing that -- solutions on  
21 Luxemburg law, without the persons here for cross  
22 examination, I am -- to compare the -- questions  
23 about -- is also an issue.

24 If one of you has the opportunity to ask  
25 them or -- person -- have to be here. Okay, just -- it is

1 evolving soon.

2 I must say it's not that I have -- I'm  
3 just saying in Harris and completing the -- Place, that  
4 was shipping, I had English law and that was under -- side  
5 were -- to cross examine. They asked them, the expert,  
6 questions that were just -- that's how they were --  
7 but I'm not -- if either one of you has a chance to  
8 examine, the other's expert doesn't have to be here.

9 SIGMUND WISSNER-GROSS: I'll explain to him.

10 SUSHEEL KIRPALANI: Yes, I just have two more  
11 issues, Judge. The first one is in the Trustee's  
12 additional statement of issues that up for status  
13 conference.

14 JUDGE MARTIN GLENN: Yes.

15 SUSHEEL KIRPALANI: They did a broad  
16 statement that if they don't control the witness, then  
17 they may not be able to bring in a declaration for them.  
18 That may be or may not be, because we don't control  
19 some witnesses, but they may be willing to give us  
20 declarations, but that is what it is.

21 But then he wants the right to  
22 immediately start cross examining even what is not  
23 an Access side witness, just a neutral witness.  
24 Take for example someone who worked at Lyondell,  
25 okay, who has nothing to do us. I think the Trustee

1 is saying that they want the immediate ability to start  
2 cross examining them and we think that the appropriate  
3 rule for someone that they call in their direct case  
4 would be to elicit direct testimony. And only if it  
5 becomes a hostile witness and of course they revert.

6 And I just wanted to make it clear that we  
7 weren't agreeing with their formulation. If they don't  
8 control the witness such that they can have a declaration  
9 from them, then they can immediately start with cross.  
10 I didn't think that that was right.

11 JUDGE MARTIN GLENN: Control of a witness does  
12 not go to treating the witness as a hostile witness. And  
13 so you don't control the witness, you can't get a  
14 declaration, you can say to them you can begin your  
15 examination with direct questions like -- leading questions  
16 on foundation subjects rather than dragging things out.  
17 But after one or two objections on a segment, I'm not  
18 going to object on things that are foundational, but  
19 things that matter, you're going to object.

20 SUSHEEL KIRPALANI: Okay.

21 JUDGE MARTIN GLENN: But it's leading and it  
22 you can establish that somebody is -- on this premise, then  
23 you're entitled to questions --leading questions, I'll  
24 permit it, but it's not automatic.

25 SUSHEEL KIRPALANI: Thank you, that's

1 clarified. Again, there are witnesses that we don't  
2 control either, but we're picking up the phone and we're  
3 talking them and would you be willing to come and talk  
4 about what happened in those day. And if they're going to  
5 be willing to put a declaration together, we'll try and  
6 do it that way. Okay.

7 JUDGE MARTIN GLENN: Maybe the best --  
8 issue some letters to witnesses and call once or twice.

9 SUSHEEL KIRPALANI: Yes.

10 (Static at Court's microphone)

11 JUDGE MARTIN GLENN: What I usually say  
12 is when you submit it, like general -- witnesses are  
13 either going to -- it depends, I generally prefer  
14 witnesses being called only once. There's no jury.  
15 So cross examination means coming back, I permit, I ask  
16 either counsel bring them into court, this is not  
17 avoided.

18 In the case of a lot of witnesses, they're  
19 going to have scheduling problems and then -- the trial  
20 to cooperate. I'm generally -- of the other side --  
21 who are not only witnesses, so they have time to  
22 prepare, you know, pull out the depositions and do  
23 it -- in which the -- it's what I consider a courtesy  
24 in cooperation.

25 You know I think I can run very

1 harmonious since we're in -- system. No one -- question  
2 a witness until they're crowding the other side's case.  
3 And some of the questions they're going to ask, I said -- I  
4 say out of bounds and they say fine. Okay?

5 But they're still other times -- every witness  
6 wants, everyone's different. The problem is they get  
7 into subjects and they can't -- when you're planning on  
8 their testimony, that's certainly --. That was  
9 addressed in the letter. That's a little --

10 SUSHEEL KIRPALANI: That's helpful.

11 JUDGE MARTIN GLENN: If what I just said,  
12 there are going to be a couple, one or two witnesses  
13 for -- additional witness that might have said no as  
14 to witness X, but we're not examining them in the course  
15 of your -- you know, on that case, but that's come up  
16 more than --

17 But I want -- if your witness is  
18 going to be -- I'm just getting exhibits here and --

19 SUSHEEL KIRPALANI: Understood, we'll look  
20 that up.

21 JUDGE MARTIN GLENN: Okay.

22 SUSHEEL KIRPALANI: The last item that  
23 I had, I don't know if Mr. Wissner-Gross has any more,  
24 was if the -- the Trustee's counsel has talked about  
25 how there's so many witnesses that are going to come



1 live and this may be why they're not going to call the  
2 star, Dan Smith, to trial

3 But that aside for a second, but if  
4 that's really their position, there were three witnesses  
5 that were Access people. One lives in London, Lincoln  
6 Benet (phonetic). He was deposed at length by the Trustee.  
7 The other is Alex Bovadnik, Lin's brother, who lives  
8 in Florida, not in New York. And the other one is Peter  
9 Ferrane (phonetic), who is a mid-level  
10 employee at Access. All three were deposed at  
11 length.

12 And putting Mr. Ferrane aside just for  
13 a second, the other two are outside -- they're far  
14 from the Court. And we haven't been able to make  
15 any headway with the Trustee's counsel and why these  
16 people are needed live in the courtroom.

17 Mr. Bovadnik, the younger brother who  
18 lives in Florida, he's not a party in this action  
19 and so we're not going to bring him here from Florida  
20 to have questions -- I mean to try to get him here,  
21 I guess we could try to get him here.

22 Lin Bovadnik, the Defendant, of course  
23 he's going to be here. Of course he's going to  
24 testify. And then as for Mr. Benet, who lives in London,  
25 while he is a party, I just for the life of me can't

1 understand --

2 JUDGE MARTIN GLENN: My view -- my  
3 advice, but I think I have the authority to order another  
4 party to be here.

5 SUSHEEL KIRPALANI: But I can't persuade --  
6 (Static at Court's microphone)

7 JUDGE MARTIN GLENN: A non-party -- hold on,  
8 I'll give you a chance Mr. Wissner-Gross. A  
9 non-party -- going to know I can't -- if they're  
10 outside -- range.

11 SUSHEEL KIRPALANI: I just think if  
12 we're talking about -- and of course with parties, it's  
13 all about compelling  
14 their attendance. Where is -- you have to compel their  
15 attendance. Third party, you can call them up and say  
16 the Judge wants to have you in court or a detective wants  
17 to have you in court.

18 What we're talking about is we have over  
19 20 witnesses. Over 20 witnesses between us. And I'm  
20 including Overlock (phonetic), so between 20 and 25.  
21 The true number could be 20, 25.

22 If we're trying to streamline and get  
23 this case done in three weeks, you would think that  
24 someone who was deposed for seven hours, who they're not  
25 going to get anything more than what they're already

1 asked and substantiated with testimony before.

2 And even though we might not have asked  
3 witnesses, questions of our own witness, we're just not  
4 troubled by their deposition. They can just designate  
5 the portions of the deposition that they want. Mr.  
6 Wissner-Gross said that he's not 40 something deposition  
7 designations, so I don't understand why some people who live  
8 far away from here, other than just to drag them or  
9 try to drag them here, you would want to have them  
10 here.

11 JUDGE MARTIN GLENN: Well, as to Mr. --

12 SUSHEEL KIRPALANI: You don't need to do that.  
13 We're talking about Frank -- and let's do anybody --

14 JUDGE MARTIN GLENN: I didn't -- at this  
15 point everybody that -- trying to go over the evidence,  
16 it's often the case that I simply say any questions and  
17 they say I have no -- which is a signal time to move on.

18 I don't want to take the time to make --  
19 demonstrate -- to make a point to death, okay? And  
20 so if we find out -- what happens in the case, with  
21 cross examination -- always can use effective cross  
22 examination and short cross examination to  
23 make your points, you can actually make it -- to  
24 be paid money.

25 I want to hear from Mr. Wissner-Gross

1 about the witnesses outside of New York.

2 SIGMUND WISSNER-GROSS: Your Honor,  
3 with respect to these three witnesses, Mr. Benet is  
4 the CEO of Access who is not --

5 JUDGE MARTIN GLENN: I've already said,  
6 we've about out of time now. He's a party, you want him,  
7 he's here.

8 SIGMUND WISSNER-GROSS: And Mr. Alex  
9 Bovadnik, aside from having the distinction of  
10 being Linda Bovadnik's younger brother, was an officer of  
11 Access, one of the parties.

12 JUDGE MARTIN GLENN: But he's not anymore.

13 SIGMUND WISSNER-GROSS: No, the thing is I  
14 believe he's still an officer. He and Mr. Ferrane  
15 were originally made Defendants on -- in the case. When  
16 we amended the complaint, we dismissed some of the claims,  
17 so they're -- they're not, but both Mr.  
18 Alex Bovadnik and Ferrane were deeply involved with  
19 respect to the total transactions.

20 So I'd argue that there are some credibility  
21 issues respectfully and that Your Honor would benefit,  
22 even though there will be short cross, by having them live.

23 JUDGE MARTIN GLENN: Let me ask. If you want  
24 to put in a short letter away from my authority and  
25 call the appearance of officers who are not parties,

1 I'll look at that.

2 SIGMUND WISSNER-GROSS: We'll do that,  
3 Your Honor.

4 JUDGE MARTIN GLENN: Try and work it out  
5 again. It may -- it may not be worth fighting about.

6 SUSHEEL KIRPALANI: It's not my life, it's  
7 other people's lives that I'm trying to deal with. I'm  
8 going to be here anyway, but if there are credibility  
9 points that Mr. Wissner-Gross feels that he's gotten,  
10 presumably he's gotten them in the deposition. So that's  
11 what I don't understand.

12 JUDGE MARTIN GLENN: I'm not --

13 SUSHEEL KIRPALANI: But okay, we'll try to  
14 work it out.

15 JUDGE MARTIN GLENN: if you can work it out,  
16 fine, otherwise you can each put in letter briefs about  
17 the Court's authority to compel the attendance of a  
18 non-concernable party to appear at trial.

19 SUSHEEL KIRPALANI: And just to be clear,  
20 we've offered to stipulate facts to avoid people having  
21 to be dragged in.

22 JUDGE MARTIN GLENN: Yes. And what I'll ask,  
23 because we're talking about under a week from today -- those  
24 arguments and a motion. Okay?

25 SIGMUND WISSNER-GROSS: That's fine.

1 SUSHEEL KIRPALANI: Thank you, Judge.

2 The last item, a little housekeeping.

3 Those pre-trial briefs, there's currently no deadline,  
4 because they weren't contemplated before. Is it the  
5 same, October 3rd, which is when everything else is?

6 JUDGE MARTIN GLENN: If you want them --

7 SUSHEEL KIRPALANI: Yeah, that's what we  
8 were talking about.

9 JUDGE MARTIN GLENN: Well, hold on. Stop.

10 SIGMUND WISSNER-GROSS: For some people  
11 October is the first day of Rosh Hashanah, but --

12 JUDGE MARTIN GLENN: Yeah, I would, in full  
13 disclosure, I'm out of the country from the night of  
14 October 4th until sometime during the day on October 10th,  
15 but my law clerks will be here and they can get to work  
16 on it all.

17 SUSHEEL KIRPALANI: I want to get it in by  
18 that time.

19 JUDGE MARTIN GLENN: I'll be out of the  
20 country during those days.

21 SUSHEEL KIRPALANI: And the last  
22 housekeeping, truly housekeeping items, but you haven't  
23 seen these proposed lists, but there was 30(b)(6)  
24 representative from Gibraltar for Non-Limited,  
25 which is a Gibraltar company. Mr. Wissner-Gross and

1 his colleagues designated portions of his deposition,  
2 which makes perfect sense, because we both had  
3 opportunities to ask him questions, we plan to do the  
4 same thing, rather than bring the person from Gibraltar  
5 here. I just want to make sure that was okay and that you  
6 knew about that.

7 JUDGE MARTIN GLENN: Did Mr. Wissner-Gross  
8 know about that?

9 SUSHEEL KIRPALANI: Yeah, I just noticed  
10 it was on your list and we just put it on our list for  
11 the depo designations. I just wanted to --

12 SIGMUND WISSNER-GROSS: We'll work it  
13 out.

14 JUDGE MARTIN GLENN: Okay.

15 SUSHEEL KIRPALANI: Thank you, Judge.

16 JUDGE MARTIN GLENN: All right, thanks a lot.  
17 Mr. Wissner-Gross.

18 SIGMUND WISSNER-GROSS: We only have one  
19 other point and that was that the in limine motions  
20 under the current schedule I think are due on the 10th  
21 and we wonder whether it would be more helpful for Your  
22 Honor to get those in a week earlier. October 3rd is a  
23 bad day for many of us, it may be that we could get them  
24 in even before then, but our thinking was perhaps if we  
25 got the in limine motions or briefs in earlier that we

1 could get over -- prior to the trial, so we can get  
2 more in the last part of the trial. And that would  
3 be helpful I think.

4 JUDGE MARTIN GLENN: Can you tell me  
5 how many in limine motions you anticipate?

6 SIGMUND WISSNER-GROSS: Justin, you  
7 want to --

8 MR. WEDDLE: I think it's some of the  
9 same issues that we've talking about, Your Honor, like  
10 one of the problems that are at first and can be  
11 asking questions --

12 JUDGE MARTIN GLENN: I find this very  
13 hard to deal with in an in limine motion. But I'm not  
14 saying don't file it as a in limine motion, but --

15 MR. WEDDLE: And Mr. Kirpalani alluded  
16 to this, but they have some objections to some of  
17 the material in our expert reports, we have objections  
18 to theirs, so there's some things that I think it's  
19 helpful to at least compile the law for Your Honor,  
20 rather than doing it on the fly.

21 JUDGE MARTIN GLENN: Sure.

22 MR. WEDDLE: And to the extent it's  
23 helpful to get them earlier, we think that it makes sense  
24 to freeze it a little bit earlier. We're talking  
25 about the -- so we really haven't had an chance to



1 confer with the other side on it. But I was thinking  
2 if we filed around October 3rd, then people would  
3 know around the 10th, then you had it fully completed,  
4 it would be before trial. If you wanted to deal  
5 with them before trial you could and if you wanted  
6 to wait for trial, you could, but if we're filing  
7 them for the first time on the 10th, it's going to be  
8 hard to get them fully briefed before trial.

9 RICHARD WERDER: Your Honor, Rich  
10 Werder for Quinn. I actually don't think there's  
11 very much disagreement here. I believe that there  
12 may be just a misinterpretation of when the  
13 deadlines are.

14 My understanding from Your Honor rules  
15 is that Motions in Limine are due two weeks prior to  
16 trial, so that's already October 3rd. I think that  
17 the confusion of the date is that at the summary  
18 judgment hearing I believe Your  
19 Honor said that October 3rd would be also the day on  
20 which the -- any party would submit their witness  
21 direct declarations and one week from that would  
22 be Motions in Limine as to that testimony.

23 So I think there are two different  
24 MIL deadlines, one would be October 3rd for general  
25 issues and then one would be October 10th

1 relating specifically to the direct testimony.

2 JUDGE MARTIN GLENN: I don't know what  
3 he said. That's sounds reasonable. I honestly  
4 don't remember.

5 MR. WEDDLE: And that's reasonable to us.

6 SUSHEEL KIRPALANI: I think we only had one  
7 motion in limine, it's on this expert as fact witness issue.  
8 That's it.

9 JUDGE MARTIN GLENN: Well, interesting, yes.  
10 Okay. I will see them. Anything else,  
11 Mr. Wissner-Gross?

12 SIGMUND WISSNER-GROSS: I don't think we  
13 have anything else, Your Honor.

14 JUDGE MARTIN GLENN: Okay. Can we  
15 schedule another hearing before the trial date?  
16 Do we have one?

17 SUSHEEL KIRPALANI: We need one, but no,  
18 we don't have one.

19 JUDGE MARTIN GLENN: Okay. What I'd like  
20 to do is schedule a telephone hearing for 10:00 a.m.  
21 October 11th. That evening is the start of Yom Kippur,  
22 it may affect -- it certainly affects me and others.  
23 So we'll do it as a telephone hearing in the morning.

24 And I really just want, hopefully, a pretty  
25 final update on where things stand for trial. All of your

1     briefs and motions should be in and we'll have somebody  
2     do a quick call hook up for the hearing. I get back into  
3     the control room the day I come in you know before, so I  
4     may not be entirely with it, but hopefully it won't be very  
5     long and we can cover whatever open issues.

6                     SUSHEEL KIRPALANI: Your Honor, you want a  
7     written submission about that? Like a letter?

8                     JUDGE MARTIN GLENN: I think it would be  
9     helpful if you could do it, what motions were filed.  
10    With respect to Motions in Limine, I generally try to  
11    resolve those before the start of trial. It's going to hard  
12    for me to do because of my schedule both from the time those  
13    motions are put in until the start of trial, but I recognize  
14    that it's helpful, it does affect your trial planning to know  
15    the answers to those, but I can't assure you that I'm going  
16    to be able to do that.

17                    And if I do, I generally decide versus -- I  
18    decided solely on the papers and sometimes, not surprising,  
19    I deny them without prejudice because I just concluded I  
20    wanted to hear evidence or argument at trial to deal with it,  
21    decide whether it's --

22                    SUSHEEL KIRPALANI: Judge, on the issue of  
23    the one Motion in Limine that I mentioned that we plan  
24    on filing which has to do with what I call expert as fact  
25    witness, I think you understand what I mean when I say that.

1                   Would it change that -- would it change your  
2                   ability to rule on it before trial if we filed it early?  
3                   If we filed it like -- what deadline would we have to file  
4                   it such that you might have enough time to look at it  
5                   before you leave?

6                   JUDGE MARTIN GLENN:   When can you file it  
7                   Mr. Kirpalani?

8                   SUSHEEL KIRPALANI:   One week from today.  
9                   We can do it earlier, my partner is telling me, which  
10                  definitely means that I'll be working even harder.

11                  JUDGE MARTIN GLENN:   You know, I have a trial  
12                  on the 19th that I've forgotten about.   So if you get it in  
13                  by Tuesday the 20th, okay?   And I'll give the other  
14                  side one week to respond to it.   Tuesday the 27th.

15                  SIGMUND WISSNER-GROSS:   Very good,  
16                  Your Honor.

17                  JUDGE MARTIN GLENN:   Okay.   And I'm in  
18                  trial all the week of the 26th, but I will try my best  
19                  to see if I can rule on it then.   Just file the motion  
20                  and opposition to it.

21                  SUSHEEL KIRPALANI:   This is not one that  
22                  has novel issues.   So it's going to be --

23                  JUDGE MARTIN GLENN:   Okay.   All right.

24                  SUSHEEL KIRPALANI:   Thank you.

25                  JUDGE MARTIN GLENN:   Okay.   Everybody

1 satisfied for today?

2 SIGMUND WISSNER-GROSS: Yes, Your Honor.

3 JUDGE MARTIN GLENN: All right. Thanks  
4 very much everybody.

5 SUSHEEL KIRPALANI: Thank you,  
6 Your Honor.

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CERTIFICATION

I, JENNIFER WILSON, the assigned transcriber, do hereby certify the foregoing transcript of proceedings before the U.S. Bankruptcy Court, Southern District of New York, on September 12, 2016, on CD, index number from 02:02:45 to 03:19:52; is prepared in full compliance with the current transcription format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded to the best of my knowledge and ability.

Jennifer Wilson

September 14, 2016

JENNIFER WILSON, AD/T #623

Date